

Expanded ASEAN Maritime Forum, Kuala Lumpur

Agenda Item 5, “Freedom of navigation, military and law enforcement, as well as other activities in the EEZ”

Remarks of the Delegation of the United States of America

October 3, 2013

- We thank the Chairman for the opportunity to speak today on this important topic.
- As our delegation mentioned this morning, as a Pacific nation the United States is committed to fostering peace and prosperity in Asia. A key element to enhancing stability in the region is advancing awareness of a rules-based system in the maritime domain.
- In this regard, it is a pleasure to speak here today on a topic of important interest to the United States, the exclusive economic zone.
- In the time that we have today, I will not go into great detail on the substantive legal views of the United States regarding the EEZ.
 - The well-documented views of the United States on matters such as freedom of navigation and military activities in the EEZ have remained unchanged in the 30 years since the advent of the regime of the EEZ and remain consistent with international law.
 - Our positions are also consistent across the globe. We take a principled and uniform approach, whether in this region of the world or others, whether with allies and friendly neighbors, or with other States.
 - We would be pleased to share our views in detail and would welcome ongoing dialogue with all EAMF participants. Even where our views differ, dialogue helps foster mutual understanding, cooperation, and peaceful relations between governments.

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- We would like to take this opportunity to emphasize several points, and also to reflect upon the importance of the EEZ in the Asia-Pacific region.
- **First, what is the EEZ, and where did it come from?**
 - In the long history of the law of the sea, the exclusive economic zone is a relatively recent innovation.
 - The EEZ is a unique maritime zone forged from compromises made by States during the Third Law of the Sea Conference in the 1970s, compromises between those coastal States that wished to extend their full sovereignty out to 200 nautical miles and those States that, conversely, wished to confine all coastal State authority to the territorial sea. The resulting maritime zone – the EEZ – is a combination of high seas law and territorial sea law that has created a unique maritime space, the rules for which are set out in the 1982 United Nations Law of the Sea Convention.
 - And the EEZ is an innovation in the law of the sea that can only be characterized as a success in light of the acceptance of this regime by nearly all States.
 - Indeed, today the EEZ – extending up to 200 nautical miles from the shores of coastal States – represents more than one third of the world's ocean space, ocean space which is vitally important for trade, commerce and other uses of the sea.
- **Second, the legal regime of the EEZ reflects a *balance of interests*.**
 - On the one hand, coastal States have exclusive *sovereign rights* over resource-related activities – such as fishing and hydrocarbon exploitation.
 - On the other hand, the extent of a coastal State's sovereign rights and jurisdiction is limited in the EEZ; it is not a zone of sovereignty. Important high seas freedoms are retained for the international

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community within the EEZ, and indeed much of the law of the high seas applies in this zone.

- This includes of course the freedoms of navigation and overflight and of the laying of submarine cables and pipelines. As reflected in Article 58 of the Convention, other internationally lawful uses of the sea related to these freedoms are likewise preserved for all States in the EEZ. Of course, dating back to the era long predating the EEZ, the United States has always considered a traditional and lawful use of the seas to include military activities.
- **Third, the United States believes that we need to work collectively to maintain and strengthen this rules-based system that fairly balances the interests of States and is reflected in the Law of the Sea Convention.**
 - We must avoid what one eminent scholar has called the “territorial temptation”—that is, the tendency of States to territorialize the EEZ, to turn the EEZ into a security zone or to attempt to impose requirements on foreign vessels or entities that might be appropriate if the EEZ were the territorial sea.
 - We say this not to diminish the importance of coastal State security; that interest cannot be doubted. Indeed because of geography, the United States has the largest EEZ of any country. While mindful of these coastal State interests, we are at the same time aware that the EEZ is not a zone in which the coastal State may simply restrict the access of others according to its wishes. Any short-term advantages gained by trying to expand coastal State authority in the EEZ are more than offset, we believe, by the long-term risks posed to global mobility, trade, and access to the world’s seas.
 - Preserving this international law regime is so important to the United States that we continue to peacefully oppose – both through diplomatic channels and operationally with naval vessels – the maritime claims of

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other States that impinge on our rights and the rights of all States as users of EEZ maritime space.

- **Fourth, we would like to say a few words about the importance of the EEZ in this region of the world.**
 - With its vital sea lanes, countless islands, semi-enclosed seas, and numerous unresolved maritime boundaries, Southeast Asia is a case study on the need to preserve the balance of interests reflected in the Law of the Sea Convention. Indeed, the EEZ comprises most of the waters of East and Southeast Asia, and the geography of the region leads to a proliferation of overlapping EEZ claims. In some areas, as many as four States may claim waters as their own EEZ, waters that are increasingly congested by different uses and activities of different actors from different States.
 - If coastal States submit to the temptation to try to territorialize their claimed EEZs, or if they assert, and, worse, attempt to use coercion or otherwise enforce, authorities not grounded in international law, tensions heighten and the prospect for instability and conflict grows in these areas.
 - To think of but one example, consider a situation in which several different countries each claim an EEZ rights in the same area. Imagine further that each claimant not only believes that it enjoys in that area broad security and other rights to control maritime activities in that area, but also began taking enforcement actions against the other claimants and users of that maritime space. This would be a recipe for conflict, perhaps even the use of armed force.
 - Fortunately, the diplomats and experts who crafted the current international legal regime for the EEZ wisely created rules that took into account the economic and related rights of the coastal State while at the same time preserving freedoms of navigation, overflight, laying of

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submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms.

- It is in our collective interest to maintain this balanced, rules-based regime that is rooted in international law, where coastal State rights and jurisdiction are robust but limited, and navigation, overflight and other lawful uses of the sea remain open to all.
- **To conclude, we would like to take this opportunity to elaborate on two points that we frequently make in the context of disputes in the South China Sea.**
 - The first point we would like to elaborate on is the idea that “maritime claims in the South China Sea *must derive from land features*.” This is a fundamental concept in the law of the sea, and it applies strictly in the South China Sea, as elsewhere. As we lawyers say, “land dominates water.”
 - What does this mean? To be valid under the law of the sea, EEZ claims, and indeed any maritime claim in the South China Sea, must derive from – and be measured from – claimed land features.
 - What do we mean by “land features”? There are two categories – continental (or mainland) territory and islands. Islands are a legal concept under the law of the sea. To be an island, the feature must be naturally formed, surrounded by water, and above water at high tide.
 - As elsewhere, the maritime features in the South China Sea that fail to meet this test cannot generate EEZ.
 - The second point we would like to elaborate on is our urging of States to “*clarify their claims* in a manner consistent with international law.”
 - Why is this important? Clarification of maritime claims will help reduce the potential for conflict and misunderstanding in the South China Sea. Neighboring countries must know the nature and

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extent of one another's claims, even if they do not agree on those claims.

- How can States clarify their claims? We offer two suggestions.
- First, States can clarify which of their claimed land features – particularly the small islands in the South China Sea – they claim EEZ from. Under the law of islands, reflected in Article 121 of the Law of the Sea Convention, some small islands may be too small to generate EEZ. Likewise, under the law of maritime boundaries, countries often accord very small islands less maritime space when those islands are on the opposite side of other States with long territorial coastlines. So, whether based on the law relating to islands or the law relating to boundaries, States can clarify which of their claimed islands they consider to generate EEZ and which do not. Those that do not would be limited to a territorial sea extending a maximum of 12 nautical miles.
- A second way States can clarify their claims is to specify the geographic limits of their maritime claims. For instance, even where a State cannot agree with a neighbor on a boundary, it can consider taking the step of specifying the locations for the outer limits of its claim.
- The United States has some relevant experience here. Even where the United States and one of our neighbors have not agreed on a boundary line, the United States publishes the geographic coordinates of our EEZ limit line; this is the line that governs where the U.S. assertion of EEZ rights and jurisdiction ends.
- This transparency reduces the scope for conflict and misunderstanding with our neighbors. It likewise illuminates and clarifies which areas are disputed between neighbors, and which are not, helping to promote good order of the seas and peaceful relations. We think this kind of an approach – where States

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specify the geographic limits of their maritime claims – could similarly help promote peace and good order in the South China Sea and more broadly throughout the Asia-Pacific region.

- We thank the Chairman for providing us the opportunity to participate on this important topic and look forward to future discussions.